

Diversion Of Narcotics: No Basis For Nurse's Defamation Suit.

A registered nurse working in long-term care was reported to the State Board of Nursing by her nursing director after a physician reported his concerns to the director over suspicious requests by the nurse for narcotics for her patients.

On the same p.m. shift the nurse phoned the physician twice for orders for narcotics, once for a patient who was comatose and once for another who was not on pain medication.

The Board suspended the nurse's license pending satisfactory completion of certain requirements. Despite her license suspension being affirmed by the Court of Appeal of Louisiana the nurse filed a separate lawsuit against her employer alleging conspiracy and defamation.

The nurse's supervisors reported her conduct to the Board based on a reasonable belief that the information was true and did so without personal malice.

COURT OF APPEAL OF LOUISIANA
June 8, 2012

The Court pointed out that persons who report nurses' conduct to the Board by law are immune from civil lawsuits if they provide information with a reasonable belief the information is accurate and do so without the malicious intention to harm the nurse's reputation.

Burden of Proof

The nurse in question has the legal burden of proof that the person reporting her had no reasonable belief in the accuracy of the report and made the report with malicious intent to harm her reputation.

The information provided to the Board was simply that nurse tried to obtain narcotics for patients of hers who did not need narcotics. The Board's own investigation established to the Board's satisfaction that there was a problem with diversion and/or dependency. Lewis v. Morgan, ___ So. 3d ___, 2012 WL 2060870 (La. App., June 8, 2012).

Narcotics Diversion: Nurse's Defamation Lawsuit Dismissed.

A person suing for defamation must prove that the person whom they are suing made a statement to others that harmed the person's personal or professional reputation in the community.

The nurse was told she was being fired for failing to document controlled substances.

That might lead some people to infer that the nurse was diverting the missing controlled substances to her own use.

However, no one ever said the nurse was being fired for drug abuse.

It was the nurse's own union representative who asked if it would be an option to check herself into drug rehab rather than lose her job, but no one from the hospital ever directly accused her of using the drugs herself that turned up missing on the audit.

The nurse never questioned the fact that discrepancies did turn up during the pharmacy director's audit between the quantity of narcotics she checked out of the machine and the narcotics that were given to her patients or correctly documented as wastings by the nurse herself.

UNITED STATES DISTRICT COURT
KENTUCKY
June 5, 2012

The hospital's pharmacy director decided to conduct an audit of the drugs dispensed from the hospital's AcuDose machines which stored and distributed the facility's controlled substances.

The audit basically involved looking back at the most frequently dispensed narcotic medications and cross-checking them with the patients' medical records.

The nurse in question's name was among three who on numerous occasions had taken out controlled substances but never documented giving, wasting or returning them. She had thirteen discrepancies identified in the preceding thirty days. The director of nursing, risk manager and human resources manager met and conferred and decided to suspend her.

After she served her suspension she was granted a hearing for them to consider taking her back. Her union representative floated the idea of drug rehab but the risk manager nixed it and the nurse was fired for an unacceptable number of medication errors involving controlled substances.

The nurse sued her former employer for defamation and retaliation. The US District Court for the Eastern District of Kentucky dismissed her lawsuit.

No Retaliation

Among other issues raised in the lawsuit the nurse claimed that three weeks before the medication audit she had complained that her unit was not adequately stocked with snack boxes for patients who did not, could not or would not eat their meals at meal times and that the supplies of fresh bed linens were insufficient.

The Court was not willing to give the nurse protected legal status as a whistleblower on the basis of those complaints. As a general rule, the Court said, if there is a significant time lag between an employee's complaints and the action taken back against the employee, retaliation is not assumed to be the employer's motive.

The pharmacy director, not a nursing supervisor, did the audit three weeks later and did so with no foreknowledge that this nurse's name would come up. The records did not lie that the nurse's documentation did not match the narcotics she checked out. Fields v. Appalachian Reg. Healthcare, 2012 WL 2021827 (E.D. Ky., June 5, 2012).